STATE OF MICHIGAN

COURT OF APPEALS

RAMONA DROZDOWSKI and DAVID DROZDOWSKI, as Next Friends of ANDREW DROZDOWSKI, a Minor,

Plaintiffs-Appellants,

v

CITY OF SOUTH LYON,

Defendant,

and

SOUTH LYON COMMUNITY SCHOOLS, a/k/a OAKLAND SCHOOLS, DEANNA TRINOSKY, MIKE SPENCER, and AIDE BONNIE,

Defendants-Appellees.

UNPUBLISHED
May 18, 2006

No. 266750
Oakland Circuit Court
LC No. 2004-060407-NI

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendants under MCR. 2.116(C)(7). We affirm.

Plaintiffs filed this action as next friend for their special needs child, Andrew, who was injured when he fell after boarding a school bus. Plaintiffs first argue that the trial court erred in determining that the motor vehicle exception to governmental immunity, MCL 691.1405, did not apply to their claims.

We review de novo a trial court's decision regarding a motion for summary disposition. *Poppen v Tovey*, 256 Mich App 351, 353; 664 NW2d 269 (2003). In reviewing a motion for summary disposition because a claim is barred by governmental immunity, MCR 2.116(C)(7), "we must give consideration to the affidavits, depositions, admissions, and other documentary evidence filed by the parties, and determine whether they indicate that defendants are in fact entitled to immunity." *Id*. at 353-354. "If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a claim is barred by immunity is a question for the court to decide as a matter of law." *Id*. at 354.

As a general rule, barring an exception, "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). Plaintiffs do not dispute that defendant South Lyon Community Schools is a governmental agency and was engaged in the exercise of a governmental function at the time of the accident. Plaintiffs argue, however, that Andrew was injured while boarding a school bus and, therefore, the motor vehicle exception to governmental immunity, MCL 691.1405, applies.

It is a well-established principle that the statutory exceptions to governmental immunity must be narrowly construed. *Poppen*, *supra* at 355. Under the motor vehicle exception, "[g]overnmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is the owner . . . ." MCL 691.1405. "In the context of a motor vehicle, the common usage of the term 'operation' refers to the ordinary use of the vehicle *as* a motor vehicle, namely, driving the vehicle." *Chandler v Muskegon Co*, 467 Mich 315, 321-322; 652 NW2d 224 (2002).

In this case, the evidence establishes that the school bus was parked and the driver was outside the vehicle when Andrew boarded the bus and subsequently fell while walking to his seat. Even if we accept plaintiffs' argument that loading and unloading children is associated with the use of a bus, the evidence does not show that Andrew's injuries arose from the "operation" of the bus as a motor vehicle, namely, driving the vehicle. Because the bus was not yet being operated as a motor vehicle at the time of the accident, the trial court properly determined that the motor vehicle exception did not apply.

Plaintiffs next argue that the individual defendants were not entitled to summary disposition because there is a genuine issue of material fact whether their conduct amounted to gross negligence that was the proximate cause of Andrew's injuries. We disagree. Plaintiffs do not dispute that the individual defendants were governmental employees acting within the scope of their authority during the exercise of a governmental function. Thus, they are immune from liability unless their conduct amounted to "gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(2)(c). In order for an employee's conduct to be considered "the proximate cause" of an injury, it must have been "the one most immediate, efficient, and direct cause of the injury or damage. . . ." *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000).

Here, there is no allegation or evidence that either of the individual defendants directly caused Andrew's fall. Rather, the evidence established that defendant Deanna Trinosky was not present at the time of the accident, and that defendant Mike Spencer was outside the bus when Andrew fell while walking to his seat inside the bus. Although defendant Aide Bonnie was inside the bus when Andrew fell, there is no allegation or evidence that she made contact with him or did anything to directly cause him to fall. Indeed, Aide Bonnie's allegedly negligent conduct involves an act of omission (failure to assist Andrew to his seat), not commission. There is no basis for concluding that the alleged negligence of any of the individual defendants could be "the one most immediate, efficient, and direct cause" of Andrew's injury.

The evidence is also insufficient to show that any of the individual defendants were grossly negligent. "'Gross negligence' means conduct so reckless as to demonstrate a substantial

lack of concern for whether an injury results." MCL 691.1407(7)(a). Simply alleging that an actor could have done more is insufficient to establish gross negligence because, with the benefit of hindsight, a claim can always be made that extra precautions could have influenced the result. *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004).

The evidence established that Andrew was considered ambulatory and able to walk independently, although he sometimes had trouble walking. There is no allegation that any of the individual defendants did anything to directly cause Andrew to fall, and Andrew's Individualized Education Plan did not require that he be physically escorted to his seat while boarding the bus. Moreover, the educational goal was to provide Andrew the least restrictive environment possible. Further, the evidence showed that the defendants who observed Andrew after his fall, along with other school employees, showed concern for Andrew by checking on him, asking him if he was okay, and watching him during the bus ride home. Everyone at the scene testified that Andrew smiled, indicated that he was okay, and showed no signs of discomfort. In light of this evidence, no reasonable person could find that any of the individual defendants were grossly negligent. For these reasons, the trial court properly determined that the individual defendants were immune from liability.

We affirm.

/s/ Bill Schuette
/s/ Richard A. Bandstra